

F. E. ALBERTS & CO.

MARCH 30, 1896.—Committed to the Committee on the Whole House and ordered to be printed.

Mr. SNOVER, from the Committee on Claims, submitted the following

REPORT:

[To accompany H. R. 5388.]

The Committee on Claims, to whom was referred the bill (H. R. 5388) for the relief of F. E. Alberts & Co., of Muskegon, Mich., have carefully considered the same and report as follows:

The facts in this case are fully and carefully set forth in a letter dated February 1, 1895, to the honorable Secretary of the Interior in response to a letter from Hon. T. C. McRae, chairman of the Committee on the Public Lands of the House of Representatives, transmitting for consideration a like bill, being House bill No. 8625, Fifty-third Congress, a copy of which letter is herewith given, and made a part of this report—

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, D. C., February 1, 1895.

SIR: I am in receipt, by reference from the Department for report, of a letter, dated the 28th ultimo, from Hon. T. C. McRae, chairman of the Committee on the Public Lands of the House of Representatives, transmitting for consideration House bill No. 8625, "For the relief of F. Alberts and Company," and requesting "an early report thereon with suggestions and recommendations in reference thereto as you may see proper to make."

The bill provides "that the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, the sum of four hundred and thirty-five dollars and sixty-seven cents to F. Alberts and Company, of Muskegon, Michigan, the same being to reimburse the said firm for money wrongfully collected from them for logs cut from lot one, section thirty, township twelve north, range fifteen west, State of Michigan."

The record of this timber-trespass case is set forth in the letter from this office to the Department, dated September 30, 1889 (copy inclosed), recommending that the proposition of Alberts Brothers to settle their liability to the Government by the payment of \$435.67 be accepted. This recommendation was concurred in by the Department October 7, 1889 (copy of said letter herewith), and the records show that said sum of \$435.67 was duly paid to the receiver of public moneys at Grayling, Mich.

The land involved is covered by soldiers' additional homestead entry No. 8943, made by Edward Delaney, final certificate No. 6122, issuing March 24, 1887, Reed City series, now Grayling, Mich., land district.

Delaney transferred the land to Oliver Barrett March 23, 1887, one day before the entry, and Barrett transferred to Frank Alberts & Co. March 2, 1888.

The entry was held for cancellation by this office February 20, 1889, on the report of the special agent, on the ground that it was made in the interest of other parties than the entryman. The transferees having applied for a hearing, the same was ordered and duly had. Upon the evidence adduced thereat this office decided, June 14, 1890, that the entryman had not violated the statute under which his entry was made, and it was accordingly relieved from suspension. Patent issued thereon March 3, 1893.

At the time Alberts & Co. cut this timber they were the transferees and equitable owners of the land. In holding them liable for the timber cut this office proceeded upon the theory that the entry having been attacked for illegality the timber cut became the personal property of the Government, and it was entitled to its value.

In this case the innocence of any wrong on the part of Alberts & Co. was fully recognized, and their proposition to settle their liability at a small stumpage value was accordingly accepted.

Inasmuch as the Government has failed to cancel the entry of Delaney, and as a patent has issued thereon, the legal title is now in Alberts & Co., if they are still the owners of the land. This title, so far as they are concerned, relates back to the date of their deed from Barrett, and they are in consequence entitled to the timber then growing as a part of the realty.

Therefore, as the title has been confirmed, the timber for which the Government has received payment becomes the property of Alberts & Co., and they are entitled to the repayment of the money received therefor.

I therefore recommend that said bill become a law.

The papers referred to are herewith returned.

Very respectfully,

S. W. LAMOREUX, *Commissioner.*

In accordance with the recommendation of the Commissioner, your committee recommend that the bill be passed.